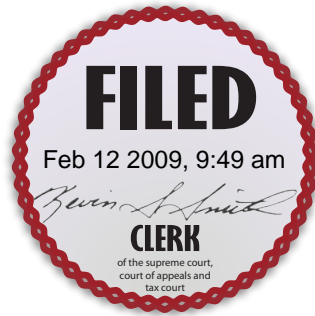


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)	
)	
Appellant-Plaintiff,)	
)	
v.)	No. 38A04-0810-CR-572
)	
ALLAN M. SCHLECHTY,)	
)	
Appellee-Defendant.)	

APPEAL FROM THE JAY SUPERIOR COURT
The Honorable Joel D. Roberts, Judge
Cause No. 38D01-0806-CM-095

February 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff State of Indiana (State) appeals the trial court's grant of appellee-defendant Allan M. Schlechty's motion to suppress. Specifically, the State argues that the trial court erred in granting Schlechty's motion because the evidence established that the probation officer who conducted the search had reasonable suspicion to believe that Schlechty violated the conditions of his probation. Therefore, the State maintains that the search was justified as a "valid probation search" and drugs that were seized from Schlechty's vehicle are admissible at trial. Appellant's Br. p. 7. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 20, 2005, Schlechty was convicted of burglary, a class B felony, and sentenced to an eight-year term of incarceration with six years suspended. The trial court placed Schlechty on probation with several conditions. One of those conditions required Schlechty to "behave well" and "not commit any other criminal offense." State's Ex. 1. Schlechty was also required to allow his probation officer to conduct "reasonable warrantless searches" of his person and property. Id.

On June 10, 2008, probation officer Ron May was scheduled to meet with Portland Police Officer James Baughman and trooper Jeremy Woods regarding a number of impending probation searches. Officer Baughman learned prior to the meeting that a thirteen-year-old girl had informed another police officer that morning that Schlechty had attempted to lure her into his vehicle. Officer Baughman informed May of the allegation at the meeting, at which time May indicated that he would search Schlechty's residence.

However, May was not informed that the police had already interviewed Schlechty and the thirteen-year-old girl and that no arrest had been made.

When the officers arrived at the home where Schlechty was staying, May knocked on the door. Schlechty stepped outside and began talking with May. Although May planned to search the residence, he did not do so because Schlechty did not have a room at the house. However, May searched Schlechty's vehicle and found marijuana, rolling papers, and a pipe in the console. Prior to the search, May was not looking for any specific contraband and did not expect to find anything.

Following the search, the State charged Schlechty with possession of marijuana, a class A misdemeanor. Thereafter, Schlechty filed a motion to suppress, alleging that the State failed to demonstrate "that the warrantless search . . . was supported by the reasonable suspicion of wrongdoing that is necessary to justify the warrantless search of a probationer or his property." Appellant's App. p. 16. Following a hearing, the trial court granted Schlechty's motion to suppress on August 21, 2008. In granting the motion, the trial court determined that

While the authorities were conducting an investigation into the Defendant's possible inappropriate interaction with a minor female child, there was no evidence that the child ever entered the Defendant's vehicle or that any property of the female child was likely to be found in the vehicle. The Court thus concludes that even after applying the lower standard applicable to a probation search, the State of Indiana has not presented any specific and articulable facts from which it could be concluded that there was reasonable suspicion that a search of the Defendant's vehicle was necessary under the regulatory scheme of probation enforcement.

Id. at 19. The State now appeals.

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that the State is appealing from a negative judgment. Therefore, it must demonstrate that the trial court's ruling on the motion to suppress was contrary to law. State v. Estep, 753 N.E.2d 22, 24-25 (Ind. Ct. App. 2001). We will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. Id. at 25. Moreover, we will not reweigh the evidence or judge the credibility of the witnesses. We consider the evidence most favorable to the trial court's decision and any uncontradicted evidence to the contrary. Gibson v. State, 733 N.E.2d 945, 951 (Ind. Ct. App. 2000). However, we review de novo the ultimate determination of reasonable suspicion. Ransom v. State, 741 N.E.2d 419, 421 (Ind. Ct. App. 2000).

II. Probationary Search

In resolving the State's contention that the evidence seized from Schlechty's vehicle is admissible at trial, we initially observe that in general, searches should be conducted pursuant to a warrant supported by probable cause. U.S. Const. amend IV; Ind. Const. art. I, § 11. However, the operation of a probation system can be a special need that is an exception to probable cause and a warrant. Allen v. State, 743 N.E.2d 1222, 1227 (Ind. Ct. App. 2001). In other words, the standards applicable to a probationary search are different than the standards that are applicable to an investigatory search. The State has the burden of proving that a warrantless search of a probationer was a probation search and not an investigatory

search. Id. Specifically, a probation search cannot be a mere subterfuge enabling police to avoid obtaining a search warrant. Id. If a search is not conducted within the regulatory scheme of probation enforcement, then it will be subject to the usual requirement that a warrant supported by probable cause be obtained. Id. Automatic searches of probationers or their property without reasonable suspicion during a “routine sweep” are not constitutional. Purdy v. State, 708 N.E.2d 20, 22 (Ind. Ct. App. 1999).

As discussed above, May conducted the search because a complaint was made that Schlechty allegedly “enticed” a thirteen-year-old girl to enter his vehicle. Tr. p. 5; Appellant’s App. p. 18. The undisputed evidence established that it was raining that morning and Schlechty had offered the girl a ride to school. There was no allegation that Schlechty touched the girl. Tr. p. 35, 58-59.

Portland’s assistant chief of police interviewed both the girl and Schlechty before May conducted the search, and there was no evidence that the girl had entered Schlechty’s vehicle. Moreover, Schlechty was not arrested and no criminal charges were filed against him. Although May decided to search Schlechty’s vehicle, May could not articulate what, if any, evidence might have been uncovered. Additionally, there is no showing that Schlechty provided May with any reason to conduct a search during their encounter. Rather, May believed that it was reasonable to search Schlechty’s vehicle merely because the police report had been filed. Tr. p. 28, 34-36.

In light of this evidence, it is apparent that May’s search of the vehicle was not based upon a reasonable belief that Schlechty had violated any term of his probation. Thus, we

decline to set aside the grant of Schlechty's motion to suppress.

The judgment of the trial court is affirmed.

NAJAM, J., concurs.

KIRSCH, J., dissents with opinion.

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ALLAN M. SCHLECHTY,)	
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APPEAL FROM THE JAY SUPERIOR COURT
The Honorable Joel D. Roberts, Judge
Cause No. 38D01-0806-CM-95

KIRSCH, Judge, *dissenting*.

I respectfully dissent. As I view the record before us, I believe the Probation Officer conducting the search had a reasonable suspicion that Schlechty violated the conditions of his probation when he twice attempted to lure a thirteen-year-old girl into his car and that the search of the car into which Schlechty attempted to lure the girl was reasonable. I would reverse the trial court's order of suppression and remand for further proceedings.